Statement of
The Honorable James L. Oberstar, Chairman
Subcommittee on Railroads, Pipelines, And Hazardous Materials
Hearing On
"Investment In The Rail Industry"
March 5, 2008

The Subcommittee is convening today to explore the implications of recent Wall Street interest on the part of hedge funds and private equity firms on the railroad industry. The subject matter and timing of this hearing reminds me of another hearing the Aviation Subcommittee held in 1985, back when this Committee was called the Committee on Public Works and Transportation.

That hearing, entitled "To Regulate Attempts to Acquire Control of Airlines," was called by then-Aviation Subcommittee Chairman Norm Mineta in response to concerns over the efforts of Carl Icahn to take control of Trans World Airlines ("TWA"), one of America's premier airlines at the time. During the course of the hearing, Mr. Icahn made a number of commitments to the members of that Subcommittee in terms of what he would do once he took control of TWA. These assurances led Congress to defer action on H.R. 2575, the "Preservation of International Air Service Act," which would have required the Department of Transportation to review pending airline acquisitions by certain Wall Street investors, including Mr. Icahn.

However, Mr. Icahn failed to abide by his commitments once he took TWA private in 1988. For example, he committed to not dismember TWA; yet over the next four years he sold off over $1.4 billion of TWA assets, including gates, planes, and its transatlantic routes, essentially eliminating TWA's future ability to compete in the aviation market. He committed to the long-term interests of TWA, yet he diverted much of TWA's cash and assets towards other investments primarily for the benefit of Mr. Icahn, such as into Texaco or Icahn-owned investments and assets. Finally, Mr. Icahn committed to improve his relationship with labor, yet by the end of 1993 TWA's employees were pushing to takeover TWA themselves and remove Icahn. Icahn remained involved in TWA until its merger with American Airlines in 2001, and his tenure with the airline continued to serve primarily his interests.

The lessons from that experience sit in my mind at the start of today's hearing. The Children's Investment Fund ("TCI"), which identifies itself as a "long-term, value-oriented investment fund," would like CSX to take a number of disconcerting steps, such as diverting capital expenditure investment for stock buybacks or freezing capital spending in the face of an uncertain regulatory environment. Further, an activist hedge fund like TCI or a private equity fund such as Fortress often hold different priorities than a railroad, and sometimes these priorities conflict with the long-term viability of a railroad. For example, an investor will often commit his or her money to a hedge fund over a certain period of time, such as one to five years. That investor will expect a reasonable return on his or her investment before committing that money for another period of time, putting pressure on the fund to provide a maximum return on that investment within that window.

However, a railroad's investment horizon is often longer. While a hedge fund or a private equity fund may put value on decisions that result in short-term gain, such as a year or two, a railroad is often making investment decisions that will not be realized except over a longer period of time. Further, decisions designed for short term benefit may lead to long-term problems for the railroad, such as the sale of valuable right of way or capacity. The detriment of these decisions may not be immediately known for the railroad but would help the short-term horizons of the investor. It should be noted that TCI has not been in existence for ten years, it has been in existence for only four.

Railroads, like the airlines, are a highly critical component to the economic health of our country. Railroads account for just over 40 percent of freight ton-miles, more than any other mode of transportation. They serve nearly every industrial-, wholesale-, retail-, agricultural-, and mineral-based sector of our economy, and make significant contributions to each. For example, Class I railroads delivered nearly 70 percent of all coal delivered to U.S. coal-fired power plants in 2006, enough to meet the electricity needs of every home in America. Further, approximately 70 percent of the automobiles built in the United States move by rail, the equivalent of over a million carloads of finished parts.

Railroads, like the airlines, are a highly critical component to the economic health of our country, and we should scrutinize any major business transaction that could adversely affect the nation's infrastructure and transportation systems. This hearing will help us determine if Congressional action is needed to ensure that the rail industry is protected from unwarranted or drastic operational changes.

I look forward to hearing from our witnesses today and thank you all for being here this morning.